Criminal Misc.No.18904-M of 2006

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Rajinder Singh Vs. State of Haryana and others

Present: Mr.J.S.Virk, Advocate,
for the petitioner.

Mr.Yashwinder Singh, AAG, Haryana,
for the State.

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The prayer made in the present petition is for registration of a case against respondents for conducting a raid at the house of the petitioner at the behest of men of liquor contractor. This is stated to be illegal being against the authority of law. It is alleged that during the raid, a sum of Rs.10,000/- was taken from the almirah. No illicit liquor, however, was recovered.

The State counsel, however, while drawing attention to the provisions of Section 49 of the Punjab Excise Act, 1914, would submit that the excise officials would have authority to search the premises without warrant. This practice of raid by excise officials in the State is apparently a recent one. Earlier, it was police alone which used to conduct any raid. It is required to be ascertained if the excise officials can do so and that too by taking along the men of private contractors to raid the premises of a free citizen. Can they do so without obtaining any search warrant?. Power to search is a matter, which can not be taken lightly as it leads to violation of some important right of the effected person. Counsel for the petitioner has referred to Sadruddin Javeri Vs. Govt. of A.P., 1998(2) RCR

(Criminal) RCR 535 to urge that search warrants are required for entry into privacy of house. It was observed by the Court as under:-

> "speaking on the guarantee under Art.21 of the Constitution of India it has been often repeated by the Courts that right to life extends to all aspects of living in dignity and in a civilised system as that of ours in India home or the house in which any law-abiding citizen lives in privacy is his most cherished possession. He or she in the privacy of the house enjoys every freedom and any violation of privacy is intrusion into his or her right under Art.21 of the Constitution of India. Laws have for the said reason limited substantially entry into the privacy of the house of men of law only under a search warrant as contemplated under Sections 93 to 100 of the Code of Criminal Procedure, 1973 or without warrant only when any police officer having authority to arrest has reason to believe that the person to be arrested has entered into or is within any place and any person residing in or being in-charge of such place on demand of the police officer would not allow him free ingress thereto and afford all reasonable facilities for a search therein as in Section 47 of the Code of Criminal Procedure and as earlier discussed to seize certain properties under Sect.102 of the Code of Criminal Procedure in the circumstances enumerated therein."

In this case even right to claim compensation for fake registration of case, search and seizure was recognized. Allegation

is also made by the petitioner that a sum of Rs.10,000/- was taken from the almirah during the alleged search. Can any person or State authority be permitted to become law unto himself?. If it is allowed it may lead to anarchy. In any case, issue here is short and crisp. Would the complaint of the petitioner show commission of a cognizable offence? If it does then police can not refuse to register FIR. Law laid down by the Hon'ble Supreme in Ramesh Kumari Vs. State (NCT of Delhi) and others, (2006) 2 Supreme Court Cases 677, would clearly be binding on the police to register FIR when a complaint reveals a commission of a cognizable offence. Police is also not to go into the veracity of the allegation.

Accordingly, the present petition is allowed. Directions are hereby issued to S.P.Karnal to register FIR on the basis of a complaint made by the petitioner and to proceed with case in accordance with law.

February 01, 2007 (RANJIT SINGH)
ramesh JUDGE